

KRIS-TECH WIRE COMPANY, INC.

and

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

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SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT

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Oneida County Industrial Development Agency  
2015 Real Estate Lease  
(Kris-Tech Wire Company, Inc. Facility)

Oneida County, City of Rome, Rome City School District

Tax Account Nos.: 243.000-0001-001.058

## **SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT**

THIS SECOND AMENDED AND RESTATED PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of May 23, 2019, is by and between **KRIS-TECH WIRE COMPANY, INC.**, a New York corporation having an address of Post Office Box 4377, Rome, New York 13442 (the "Company") and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

### W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the "Enabling Act"), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Company acquired an 8.040± acre parcel of land situated at 80 Otis Street in the Griffiss Business and Technology Park (the "Land") and constructed on the Land a 45,000± square foot manufacturing facility and a 22,000± square foot addition thereto (collectively, the "Existing Improvements"), all to be used for the manufacturing of bare and insulated copper wire products; and

WHEREAS, the Company now wishes to construct a 3,000± square foot addition to the Improvements (the "Addition") and acquire and install equipment in the Addition (the "Equipment"); and

WHEREAS, the Addition and the Equipment are referred to collectively as the "2018 Facility," the construction and equipping of the Addition is referred to as the "2018 Project" and the Addition, Existing Improvements, the Land and the Equipment are, collectively, the "Facility"; and

WHEREAS, the Company leases the Land and Improvements to the Agency pursuant to a Lease Agreement dated as of November 1, 2015 (the "Lease Agreement"), and the Agency leases the Land and Improvements back to the Company pursuant to a Leaseback Agreement dated as of November 1, 2015, as amended on November 1, 2016 (together with all amendments, the "Leaseback Agreement"); and

WHEREAS, in order to induce the Company to develop the 2018 Facility, the Agency is willing to further amend the Leaseback Agreement to add and include the 2018 Facility, pursuant to the terms and conditions contained in a Second Amendment to Leaseback Agreement dated of even date herewith; and

WHEREAS, the Agency has agreed to accept a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Facility is exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing July 26, 2016, the taxable status date, (the "Exempt Taxes"), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement from the first date of the Exemption Term (as that date is determined by the parties and described herein) through the term of the Leaseback Agreement (the "Exemption Term"); and

WHEREAS, each year of the Exemption Term is more particularly set forth on Schedule B attached hereto (each year being referred to as an "Exemption Year"); and

WHEREAS, the Agency and the Company entered into an agreement dated as of November 1, 2016 (the "First Amended and Restated PILOT Agreement") making provision for payments-in-lieu-of-taxes and such assessments by the Company to the City of Rome, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Oneida County, the Rome City School District and appropriate special

districts (hereinafter each a "Taxing Authority" and collectively the "Taxing Authorities") in which any part of the Facility is or is to be located; and

WHEREAS, the Agency and the Company now wish to enter into this Second Amended and Restated PILOT Agreement to amend the terms of the First Amended and Restated PILOT Agreement to add and include the 2018 Facility; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

- 1. The Company shall pay to each Taxing Authority:
  - (a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and
  - (b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. (a) The Company shall pay for the benefit of each Taxing Authority as set forth on Schedule A attached hereto and made a part hereof an aggregate amount in lieu of the Exempt Taxes (the "PILOT Payments") during each Exemption Year in the amounts set forth below:

Exemption Year 1	\$29,464.21
Exemption Year 2	\$26,810.18
Exemption Year 3	\$34,486.39
Exemption Year 4	\$36,934.92
Exemption Year 5	\$37,673.62
Exemption Year 6	\$76,854.18
Exemption Year 7	\$78,391.27
Exemption Year 8	\$79,959.09
Exemption Year 9	\$81,558.27
Exemption Year 10	\$83,189.43
Exemption Year 11 and thereafter:	100% of Exempt Taxes

Such PILOT Payments shall be billed by the Taxing Authorities in the same proportion as taxes would have been apportioned but for the Agency's involvement, unless the Taxing Authorities have consented in writing to a specific apportionment (For the purposes of apportioning the PILOT Payments, each Taxing Authority shall use the tax rate for the prior Exemption Year).

Anything herein to the contrary, notwithstanding, this Agreement shall terminate on the date on which the Leaseback Agreement shall terminate and the Agency shall terminate its leasehold interest in the Facility pursuant to the Lease Agreement. The benefits under this Agreement are subject to the terms and conditions of a certain First Amended and Restated Job Creation and Recapture Agreement dated as of May 23, 2019.

(b) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, shall constitute an Event of Default under Section 7.1(a) of the Leaseback Agreement, and the Agency may take any one or all remedial steps afforded it in Section 7.2 of the Leaseback Agreement; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.

3. The Company will make PILOT Payments to each Taxing Authority hereunder for each Exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility. PILOT Payments that are delinquent under this Agreement shall be subject to a late penalty of five percent (5%) of the amount due which shall be paid by the Company to the affected Taxing Authority at the time the PILOT Payment is paid. For each month, or part thereof, that the PILOT Payment is delinquent beyond the first month, interest shall accrue to and be paid to the affected Taxing Authority on the total amount due plus a late payment penalty in the amount of one percent (1%) per month until the payment is made.

4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the

Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.

6. This Agreement shall be binding upon the successors and assigns of the parties.

7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company. Notwithstanding anything herein to the contrary, for so long as this Agreement is in effect, the Company hereby unconditionally and irrevocably waives its right, if any, to apply for and/or receive the benefit of any other real property tax exemption with respect to the Facility, including, without limitation, any real property tax exemption that may be available under Section 485-b and Section 485-e of the Real Property Tax Law.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.

9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.

(b) This Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

(c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency  
584 Phoenix Drive  
Rome, New York 13441-4105  
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC  
501 Main Street  
Rome, New York 13501  
Attn.: Linda E. Romano, Esq.

To the Company: Kris-Tech Wire Company, Inc.  
P.O. Box 4377  
Rome, New York 13442  
Attn.: Graham Brodock, President

With a Copy To: Barclay Damon, LLP  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, NY 13202  
Attn.: Heather L. Sunser, Esq.

provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

10. It is the intention of the parties that this Second Amended and Restated PILOT Agreement amend and replace the First Amended and Restated PILOT Agreement, effective immediately.

[signature page follows]



IN WITNESS WHEREOF, the parties have executed this **SECOND AMENDED AND RESTATED PILOT Agreement** as of the date first above written.

KRIS-TECH WIRE COMPANY, INC.

By:   
Graham Brodock  
President

ONEIDA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
David C. Grow  
Chairman

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF ONEIDA )

On the 10<sup>th</sup> day of May 2019 before me, the undersigned a notary public in and for said state, personally appeared **Graham Brodock**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

WENDY ANNE MACLAUGHLIN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MA6365756  
Qualified In Oneida County  
My Commission Expires 10-16-2021

STATE OF NEW YORK )  
 : ss.:  
COUNTY OF ONEIDA )

On the 10<sup>th</sup> day of May 2019 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

WENDY ANNE MACLAUGHLIN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01MA6365756  
Qualified In Oneida County  
My Commission Expires 10-16-2021

STATE OF NEW YORK        )  
                                      : ss.:  
COUNTY OF ONEIDA        )

On the \_\_\_\_ day of May 2019 before me, the undersigned a notary public in and for said state, personally appeared **Graham Brodock**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK        )  
                                      : ss.:  
COUNTY OF ONEIDA        )

On the 25<sup>th</sup> day of May 2019 before me, the undersigned a notary public in and for said state, personally appeared **David C. Grow**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public



**SCHEDULE A**

**COUNTY OF ONEIDA**

Receiver of Taxes  
800 Park Avenue  
Rome, New York 13501

**CITY OF ROME**

Rome City Hall  
198 North Washington Street  
Rome, New York 13440  
Attn.: David Nolan, City Treasurer

**ROME CITY SCHOOL DISTRICT**

409 Bell Street  
Rome, New York 13440  
Attn.: District Treasurer

**SCHEDULE B**

**EXEMPTION YEARS**

<b>Exemption Year (Assessment Roll Year)</b>	<b>County/City Taxes</b>	<b>School Taxes</b>
Year One (07/2016)	01/01/2017 – 12/31/2017	07/01/2017 – 06/30/2018
Year Two (07/2017)	01/01/2018 – 12/31/2018	07/01/2018 – 06/30/2019
Year Three (07/2018)	01/01/2019 – 12/31/2019	07/01/2019 – 06/30/2020
Year Four (07/2019)	01/01/2020 – 12/31/2020	07/01/2020 – 06/30/2021
Year Five (07/2020)	01/01/2021 – 12/31/2021	07/01/2021 – 06/30/2022
Year Six (07/2021)	01/01/2022 – 12/31/2022	07/01/2022 – 06/30/2023
Year Seven (07/2022)	01/01/2023 – 12/31/2023	07/01/2023 – 06/30/2024
Year Eight (07/2023)	01/01/2024 – 12/31/2024	07/01/2024 – 06/30/2025
Year Nine (07/2024)	01/01/2025 – 12/31/2025	07/01/2025 – 06/30/2026
Year Ten (07/2025)	01/01/2026 – 12/31/2026	07/01/2026 – 06/30/2027